

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, February 2, 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Cheri Spencer, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: January 20, 1995.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-1881 Filed 1-24-95; 8:45 am]

BILLING CODE 5000-04-M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, February 1, 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director, Defense Research Engineering (DDR&E), and through DDR&E, to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: January 20, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-1880 Filed 1-24-95; 8:45 am]

BILLING CODE 5000-04-M

Joint Service Committee On Military Justice: Public Meeting

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a public meeting of the JSC. This notice also describes the functions of the JSC.

DATES: Wednesday, March 1, 1995, 10:00 a.m. to 12:00 p.m.

ADDRESSES: Building 111, Washington Navy Yard, Washington, DC.

FUNCTION: The JSC was established by the Judge Advocates General in 1972. The JSC currently operates under Department of Defense Directive 5500.17 of January 23, 1985. It is the function of the JSC to improve Military Justice through the preparation and evaluation of proposed amendments and changes to the Uniform Code of Military Justice and the Manual for Courts-Martial.

AGENDA: The JSC will receive public comment concerning the revision to Military Rule of Evidence 412. This review is necessitated by Military Rule of Evidence 1102. This proposed revision was published on January 25, 1995.

FOR FURTHER INFORMATION CONTACT: LT Kristen M. Henrichsen, JAGC, USN, Executive Secretary, Joint Service Committee on Military Justice, Building 111, Washington Navy Yard, Washington, DC, 20374-1111; (202) 433-5895.

Dated: January 20, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-1888 Filed 1-24-95; 8:45 am]

BILLING CODE 3810-01-M

Proposed Changes to U.S. Court of Appeals for the Armed Forces Rules

ACTION: Notice of proposed changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes (italicized) to Rule 4(b), Rule 19(d), Rule 27(a)(1)(E), Rule 30 and Rule 31 of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces, and the proposed addition of a Student Practice Rule for public notice and comment:

Rule 4. Jurisdiction

* * * * *

(b) Extraordinary Writ.

(1) The Court may, in its discretion, entertain *original* petitions for extraordinary relief including, but not limited to, writs of mandamus, writs of prohibition, writs of habeas corpus, and writs of error coram nobis. See 28 USC 1651(a) and Rules 18(b), 27(a), and 28. *Absent good cause, no such petition shall be filed unless relief has first been sought in the appropriate Court of Criminal Appeals. Original writs are rarely granted.*

(2) The Court may, in its discretion, entertain a writ appeal petition to review a decision of a Court of Criminal Appeals on a petition for extraordinary relief. See Rules 18(a)(4), 27(b), and 28.

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Rule 19. Time Limits

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(d) Petition for extraordinary relief. A petition for extraordinary relief under Rule 4(b)(1) shall be filed, with a supporting brief and any available record, as soon as possible but, in any event, no later than 20 days after the petitioner learns of the action complained of. However, a petition for writ of habeas corpus or writ of error coram nobis may be filed at any time. See Rules 27(a) and 28.

* * * * *

Rule 27. Petition for Extraordinary Relief, Writ Appeal Petition, Answer, and Reply

(a) Petition for extraordinary relief. (1) A Petition for extraordinary relief, together with any available record, shall be filed within the time prescribed by Rule 19(d), shall be accompanied by proof of service on all named respondents, and shall contain:

* * * * *

(E) The jurisdictional basis for the relief sought, *including an explanation of how the writ will be in aid of the Court's jurisdiction*; the reasons the relief sought cannot be obtained during the ordinary course of trial or appellate review or through administrative procedures; *and the reasons relief has not been sought from the appropriate Court of Criminal Appeals, if that is the case, see Rule 4(b)(1);* and

* * * * *

Rule 30. Motions

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(b) An answer to a motion may be filed no later than 5 days after the filing of the motion.

(c) [New] A reply to an answer to a motion may be filed no later than 5 days after the filing of the answer.

* * * * *

[Subsections (c) through (f) to be redesignated as subsections (d) through (g), respectively.]

(g) [As redesignated] Notwithstanding any other provision of these rules, the Court may immediately act on any motion without awaiting an answer or a reply, if it appears that the relief sought ought to be granted. * * *

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Rule 31. Petition for Reconsideration

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(c) [New] A reply to an answer to a petition may be filed no later than 5 days after the filing of the answer.

[Subsections (c) and (d) to be redesignated subsections (d) and (e), respectively.]

Proposed Student Practice Rule

a. Appearance by Law Student

With leave of this Court, an eligible law student acting under a supervising attorney may appear in a particular case, except a case in which any party is under or is potentially subject to a sentence of death, on behalf of any party, including the United States, provided that the student and supervising attorney comply with the provisions of this rule.

b. Eligibility of Student

To be eligible to appear and participate in any case, a law student must:

(1) Be a student in good standing in a law school approved by the American Bar Association, or be a recent graduate of such school awaiting the result of a state bar examination;

(2) Have completed legal studies amounting to at least four semesters, or the equivalent if the school is on some basis other than a 3 year, 6 semester basis;

(3) Have completed and received a passing grade in courses in criminal procedure and criminal law;

(4) Neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf the services are rendered; and

(5) Be familiar with the Uniform Code of Military Justice and the rules of this Court.

c. Supervising Attorney Requirements

A supervising attorney must:

(1) Be an attorney of record in the case;

(2) Be a member in good standing of the bar of this Court;

(3) Have been admitted to practice for a minimum of two years and have appeared and argued in at least one case before this Court or appeared and argued in at least three cases before state or Federal appellate courts;

(4) Not supervise more than five (5) students at any one time;

(5) Appear with the student in any oral presentations before this Court;

(6) Read, approve and sign all documents filed with this Court;

(7) Assume personal professional responsibility for the student's work in matters before this Court;

(8) Be responsible to supplement the oral or written work of the student as

necessary to ensure proper representation of the client;

(9) Guide and assist the student in preparation to the extent necessary or appropriate under the circumstances;

(10) Be available to consult with the client; and

(11) Neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf the services are rendered.

d. Authorization and Certification

(1) The party on whose behalf the student appears must consent to the representation by that student in writing.

(2) The supervising attorney must indicate in writing approval of the appearance by the law student and consent to supervise the law student.

(3) The law student must be certified by the dean of the student's law school as being of good character and competent legal ability.

(4) Before commencing student representation in any case under this rule, the supervising attorney shall file a motion for leave to allow student representation in such case. The motion should put forth that the provisions of this rule have been met and that in counsel's view the case is an appropriate one for student representation. The written consent, approval and certification referred to above shall be attached to the motion. A copy of the motion shall be served on opposing counsel, but no answer will be allowed except with leave of the Court. Once these documents are filed, the Court will decide, using its discretion on a case-by-case basis, whether to allow the student representation.

e. Activities

Upon fulfilling the requirements of this rule, the student may enter an appearance in a case and:

(1) assist in the preparation of briefs and other documents to be filed in this Court, but such briefs or documents must also be signed by the supervising attorney;

(2) participate in oral argument, but only in the presence of the supervising attorney; and

(3) take part in other activities in connection with the case, subject to the direction of the supervising attorney.

f. Termination

The dean's certification of the student:

(1) shall remain in effect, unless sooner withdrawn, until the publication of the results of the first bar examination taken by such student following the student's graduation. For any student

who passes that examination the certification shall continue in effect until the date the student is admitted to the bar;

(2) may be withdrawn by the Court at any time; and

(3) may be withdrawn by the dean at any time.

g. Exceptions

(1) This rule does not apply to an appearance or an oral argument by a law student on behalf of an *amicus curiae*. A law student may appear on behalf of an *amicus curiae* on motion and in accordance with the provisions of Rules 26 and 40(b)(2).

(2) Nothing in this rule shall preclude the Government or any agency, firm, or organization from compensating a law student for services rendered under such rule.

(3) The Court retains the authority, on good cause shown, to establish exceptions to these procedures in any case. See Rule 33.

DATES: Comments on the proposed changes and addition must be received by February 24, 1995.

ADDRESSES: Forward written comments to Thomas F. Granahan, Clerk of the Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20442-0001.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of the Court, telephone (202) 272-1448 (x600).

SUPPLEMENTARY INFORMATION: The Rules Advisory Committee Report on the proposed changes to Rule 4(b), Rule 19(d), Rule 27(a)(1)(E), Rule 30, and Rule 31 and the Proposed Student Practice Rule is included as an attachment to this notice.

Committee Report on Proposed Rules 4(b) and 27(a)(1)(E)

The purpose of the proposed changes to Rules 4(b) and 27(a)(1)(E) is to make clear to practitioners that a petition for extraordinary relief should not be filed with the Court unless efforts to obtain the requested relief from the appropriate Court of Criminal Appeals (formerly Court of Military Review) have been unavailing. See, e.g., *United States v. Coffey*, 38 MJ 290, 291 (CMA 1993) (per curiam). Since those courts have All Writs Act powers, and share with the Judge Advocates General responsibility for the administration of military justice in their branch of the service, it is only sensible that they be afforded an opportunity to address extraordinary writ issues before they reach the United States Court of Appeals for the Armed Forces (formerly Court of Military

Appeals). This will give those closest to the issues a chance to bring their experience to bear, and in some number of cases may make it unnecessary for the Court of Appeals for the Armed Forces to become involved. Even if relief is denied by the Court of Criminal Appeals, their consideration may help to frame the issues and develop a record. Both of these factors will facilitate efficient and intelligent review by the Court of Appeals for the Armed Forces. It is presumed, on the other hand, that extraordinary writ cases will be addressed expeditiously by the Courts of Criminal Appeals.

In keeping with the policy underlying Article 36(a), that military practice should conform to the extent practicable with civilian federal practice, these proposed rule changes take into account the practice of the Supreme Court and the Article III courts of appeals.

Fed.R.App.P. 22(a) requires that original habeas corpus petitions be filed in the district court. (The part of Fed.R.App.P. 22(a) that calls for resort to the district court merely made former practice explicit. 9 *Moore's Federal Practice* ¶ 222.01[2], at 22-3 (James Wm. Moore, Bernard J. Ward & Jo Desha Lucas 2d ed. 1993) (Advisory Committee Note).)

The Supreme Court discourages the filing of original extraordinary writ petitions with it. S.Ct.R. 20.1, 20.3, 20.4; Robert L. Stern, Eugene Gressman, Stephen M. Shapiro & Kenneth S. Geller, *Supreme Court Practice* § 11.3, at 501-03 (7th ed. 1993) (last time Court granted original habeas petition was in 1925); see also 28 USC 2242 (1988) (habeas application directed to a Justice "shall state the reasons for not making application to the district court of the district in which the applicant is held").

Because courts-martial are not standing bodies, requiring resort to the trial court is not feasible in the military context. Requiring resort to the intermediate courts serves similar purposes.

These proposed rule changes permit a petitioner to petition the Court of Appeals for the Armed Forces without having first sought relief from the Court of Criminal Appeals only if there is good cause to do so. This exception has been included only because it is impossible to anticipate all eventualities. It is intended that a stringent standard would be applied in this connection. The Committee believes that what constitutes good cause for this purpose will be spelled out by the Court in its opinions. While we have used the term already used by the Court for requests to suspend the Rules, see Rule 33, and by Congress in Article 67(a)(3) with respect to petitions

for grant of review, we do not, by so doing, mean to imply that the standards would be comparable. Extraordinary writs are and should remain extraordinary, and bypassing the Courts of Criminal Appeals should be permitted sparingly and only for compelling reasons.

The Committee considered inserting in Rule 27(a)(1)(E) a clause requiring counsel to state the exceptional circumstances that are believed to warrant an exercise of the Court's discretionary powers. This proposal was not adopted because the Committee believes that such a requirement is already implicit in Rule 27(a)(1)(F), which requires counsel to state the "[r]easons for granting the writ." Subdivision (E) speaks to jurisdiction, rather than the divers prudential factors that bear on whether the Court's All Writs Act authority should be exercised.

These proposed rule changes originated with a version proposed by Judge Richard M. Mollison of the United States Navy-Marine Corps Court of Criminal Appeals.

Committee Report on Proposed Rule 19(d)

The Court's Rules Advisory Committee, with one member dissenting, recommends that Rule 19(d) be changed to eliminate the apparent 20-day time limit for petitioning the Court for a writ of error coram nobis.

Noting that only petitions for writ of habeas corpus are expressly exempted from the 20-day time limit established by Rule 19(d), the Committee suggests the failure also to exempt petitions for writ of error coram nobis may be due to an oversight by the drafters of Rule 19.

The All Writs Act, 28 USC 1651(a), which is the basis for the Court's extraordinary relief jurisdiction, establishes no fixed time limit for applications for writs of error coram nobis. See *United States v. Morgan*, 346 U.S. 502 (1954) (writ available after sentence already served when the conviction was sought to be used to enhance sentence on a later conviction).

When Rule 19 was drafted, the Court of Appeals for the Armed Forces had not previously suggested any time limit for the filing of a petition for writ of error coram nobis. See *Del Prado v. United States*, 23 USCMA 132, 48 CMR 748, 749 (1974) (citing *United States v. Morgan, supra*). Nor has the Court strictly enforced its present rule. Cf. *Garrett v. Lowe*, 39 MJ 293, 295 and n.2 (CMA 1994). Coincidentally, the joint Courts of Criminal Appeals (formerly Courts of Military Review) Rules do not impose a time limit on any petitions for extraordinary relief, including those for

writs of error coram nobis. Joint Ct. Crim. App. R. 20, 22 MJ at cxxxv (1985); see *Tillman v. United States*, 32 MJ 962 (ACMR 1991); but see AFCEMR R. 5-2b (1992) (time limits same as Ct. Crim. App. r. 19(d)). Accordingly, the Rules Advisory Committee recommends that the last sentence of Rule 19(d) be amended to read as follows: "However, a petition for writ of habeas corpus or writ of error coram nobis may be filed at any time."

Committee Report on Proposed Rules 30 and 31

The purpose of these proposed rule changes is to eliminate the need for counsel to seek leave of court when filing replies to answers to motions generally and petitions for reconsideration. *E.g.*, D.C. Cir. R. 27(d); 4th Cir. IOP 27.3; D.D.C.R. 108(d); Fed. C1. R. 83.2; see Robert L. Stern, Eugene Gressman, Stephen M. Shapiro & Kenneth S. Geller, *Supreme Court Practice* § 16.6, at 642 n.6 (7th ed. 1993). The changes will bring motion and reconsideration practice into line with the Court's normal practice of permitting replies. See C.A.A.F.R. 19(a)(5)(A)-(B), 19(a)(7)(B), 19(b), 19(c), 19(e), 19(f), 21(c)(1)-(2), 22(b), 23(b), 27(b), 28(c), 29(c).

Committee Report on Proposed Student Practice Rule

The Court Rules Advisory Committee, with one member dissenting, recommends adoption of a Student Practice Rule. The proposed rule allows for the entry of appearance on behalf of a party by a third-year law student under the guidance of a supervising attorney who must also be the counsel of record. This rule is a natural extension of the Court's current policy allowing law students to argue on behalf of *amici curiae*. It facilitates the interest of the Court and the Armed Forces in training future judge advocates. The rule is similar to student practice rules in force in over half of the other Federal courts of appeals.

The rule provides a structure that will assure that parties receive appropriate representation. It permits third-year law students who have been certified by the dean of their law school as being in good standing to enter an appearance on behalf of a party in any case except a capital case, under the guidance of the supervising attorney. In order to supervise participating law students, the supervising attorney must be an attorney of record for the case, must have been admitted to practice for at least two years, must be a member of the bar of this Court, and must have appeared and argued in at least one case

before this Court or appeared and argued in at least three cases before state or Federal appellate courts.

The rule is not self-executing. Permission of the Court to allow the student to participate in a case is always required. This discretion should allow the Court to monitor the progress of student practice under the rule as well as to adapt to unforeseen circumstances as they arise.

Dated: January 20, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-1879 Filed 1-24-95; 8:45 am]

BILLING CODE 5000-04-M

Department of the Air force

Acceptance of Group Application Under PL 95-202 and DODD 1000.20 "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Braniff Airways, Who Served Overseas as a Result of a Contract With the Air Transport Command During the Period February 26, 1942 through August 14, 1945"

Under the provisions of Section 401, Public Law 95-202 and DOD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the group known as: "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Braniff Airways, Who Served Overseas as a Result of a Contract With the Air Transport Command During the Period February 26, 1942 through August 14, 1945." Persons with information or documentation pertinent to the determination of whether the service of this group should be considered active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force, Washington, D.C. 20330-1000. Copies of documents or other materials submitted cannot be returned. For further information, contact Lt Col Orban, (301) 981-3504.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

FR Doc. 95-1787 Filed 1-24-95; 8:45 am]

BILLING CODE 3910-01-M

Office of the Secretary of the Army

Finding of No Significant Impact (FNSI) and Environmental Assessment for Disposal and Reuse of Nike Battery Kansas City 30, Pleasant Hill, Missouri

AGENCY: Department of the Army, DoD.

ACTION: Finding of no significant impact.

SUMMARY: The proposed action analyzed by this document is the disposal and reuse of the Nike Battery Kansas City 30 (Nike KC-30) as required by the Defense Authorization Amendments and the Base Closure and Realignment Act (Public Law 100-526). The purpose of the Environmental Assessment (EA) is to identify and evaluate the anticipated effects of disposal by the Army and reuse of Nike KC-30 by non-Army entities.

The EA studied in detail three possible alternatives for complying with the recommendation made by the Defense Secretary's Commission on Base Realignment and Closure to dispose of Nike KC-30. These alternatives included: no action; encumbered disposal in which the Army would identify and impose reuse constraints on future owners; and unencumbered disposal where potential encumbrances would be identified and removed by the Army prior to disposal of the property. The EA found that encumbered disposal of Nike KC-30 is the most desirable course of action to comply with the Commission's recommendation. Encumbered disposal of the facility would result in positive environmental effects. Prior to disposal of the property, the Army would identify all areas of environmental contamination and conduct remedial actions to return the site to a level consistent with future use without presenting unacceptable risks to occupants or workers. Encumbered disposal of the site would also allow the Army to return surplus capacity to public or private use.

However, encumbered disposal of the Nike KC-30 site would result in an Army imposed reuse constraint on future owners. This constraint would require the future owner to remove sections of the existing buried, non-friable asbestos-containing water distribution and sewage lines if the future owner disturbs these underground lines during development. Removal and disposal of the disturbed sections would be required to be conducted in accordance with federal and state regulations governing asbestos containing material. Additional constraints may be identified during